

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DANYALE WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

December 30, 1997

No. 197593

Recorder's Court

LC No. 95-014015

Before: McDonald, P.J., and Wahls and J. R. Weber*, JJ.

MEMORANDUM.

Defendant appeals by right his bench trial conviction for carrying a concealed weapon. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant waived his right to trial by jury in a proceeding conducted by Recorder's Court Judge Robert L. Evans. The trial, however, was conducted before Recorder's Court Judge Karen Fort Hood. Defendant first argues that, by virtue of the phraseology Judge Evans used in advising defendant of his right to trial by jury or to instead opt for a bench trial, defendant was given reason to expect that Judge Evans would personally preside at the eventual trial. On this basis he argues that his waiver of trial by jury was not understanding and voluntary. The statute which permits waiver of trial by jury, MCL 763.4; MSA 28.857, specifies that once trial by jury is waived any judge of the court in which the matter is pending may preside at trial. The written waiver form, an exemplar of which defendant executed in this case, similarly indicates that the waiver is not judge specific. *Sinistaj v Burt*, 66 F3d 804, 809 (CA 6, 1995). Assuming arguendo that defendant's misunderstanding would have entitled him to have the trial court exercise its discretion as to whether to allow him to withdraw his waiver, defendant never asked to withdraw his waiver. As it must have been apparent to defendant that Judge Hood was not Judge Evans, defendant's failure to object before trial waived any right he might have had to insist on trial either before Judge Evans or by a jury. *People v Grant*, 445 Mich 535, 546; 520 NW2d 123 (1994).

* Circuit judge, sitting on the Court of Appeals by assignment.

Defendant next contends that his trial counsel was ineffective because, at trial, counsel failed to pursue a line of questioning that had been utilized at his preliminary examination. No demonstration has been made that the series of inquiries at preliminary examination was effective in establishing a reasonable doubt or otherwise casting doubt on the credibility of the arresting officer. In any event, defendant has the burden of overcoming a strong presumption that counsel's conduct was within the range of reasonable assistance, and a further presumption that the challenged action might have been sound trial strategy. *People v Mitchell*, 454 Mich 145; 560 NW2d 600 (1997). Defendant has failed to carry his burden of proof in either respect.

Affirmed.

/s/ Gary R. McDonald
/s/ Myron H. Wahls
/s/ John R. Weber